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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,282	12/15/2003	Hiroshi Nakahata	AA556C	4285

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THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL BUSINESS CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI, OH 45224

EXAMINER

HAND, MELANIE JO

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 07/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/736,282

Applicant(s)

NAKAHATA ET AL.

Examiner

Melanie J. Hand

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments filed May 12, 2006 have been fully considered but they are not persuasive.

With respect to applicant's arguments regarding the rejection of claim 1 under 35 U.S.C. 102, it is noted that the features upon which applicant relies (i.e., that the discontinuities define a predetermined pattern of slits, cuts or perforations) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

With respect to applicant's argument that Buell does not teach that the discontinuities are opened when tensile forces are applied, Examiner states that the discontinuities taught by Buell are pleats, which are opened when tensile forces are applied. Such discontinuities are formed when the chassis outer layer taught by Buell is bonded to the elastic waistband and inner layers in a tensioned state and permitted to relax. Thus the pleats are formed from portions of the inner layers of said diaper and thus the pleats, or discontinuities, extend through the chassis layer. A distinction was not made in the disclosure or the claims that precludes an open pleat (which does flatten as applicant correctly notes) in its flattened state from satisfying the limitation of a discontinuity that opens upon application of tensile forces to the discontinuities.

With respect to applicant's argument that it is not clear whether the elastomeric foam in the side panel members 90 taught by Buell can be used as the material for elastomeric

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members 76, Examiner disagrees. The side panels form part of the waist opening and therefore the elastomeric foam is capable of use in the elastomeric members 76.

With respect to applicant's argument that the extensibility controlling means is not disposed in the transverse direction as taught by Buell, Examiner disagrees and has restated the rejection of claim 1 to address this limitation.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Buell et al (U.S. Patent No. 5,221,274).

With respect to **Claims 1,7**: Buell teaches diaper 20 having longitudinal edges 62, end edges 64, first waist region 56, second waist region 58, a crotch region between the two waist regions, side panels 70 and 72, liquid-pervious topsheet 24, absorbent core 28 positioned between topsheet 24 and liquid-impervious backsheet 26. (Col. 6, lines 20-23, 40-45) Side panels 70 are located in the front waist region 56 and side panels 72 are located in the rear waist region 58. (Col. 6, line 67 - Col. 7, line 2) Side panels 70 and 72 form a unitary waist opening with said waist regions and therefore are comprised of backsheet material. Elasticized waistband 35 is operatively associated with elastomeric members 76 and has pleats or rugosities 80.

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Elastomeric members 76 in elastic waistband 35 provide the extensibility controlling means and such members extend in the transverse direction. (Col. 17, lines 52-58, Col. 19, lines 7-11)

With respect to **Claim 2**: Buell teaches an elongation to break of 400-700% of unstretched length for the elastomeric material in the side panels. (Col. 10, lines 30-32)

1With respect to **Claim 3,4**: Buell teaches that said the elastomeric foam used to fabricate elastomeric members 76 has an extension force of about 200 grams/inch (200g/25mm) at 50% extension. (Col. 18, lines 56-61, Col. 42, lines 52-60)

With respect to **Claim 5**: Elastomeric members 76 are components of elastic waistband 35 which is disposed at the end edges 64 in front and back waist regions 54 and 56.

With respect to **Claim 6**: Elastomeric members 76 are comprised of elastomeric polyurethane foam. (Col. 18, lines 56-61)

With respect to **Claim 8**: Buell teaches that diaper 20 is comprised of a holder and a liner, wherein said liner is comprised of an absorbent composite further comprised of a topsheet, core and backsheet, therefore a liquid-impermeable backsheet 26 is disposed between an outer holder or chassis layer and the absorbent core 28. (Col. 8, lines 39-45)

With respect to **Claims 9,10**: Buell teaches that backsheet 26 is wider and longer than core 28 and is joined in the periphery 60 to topsheet 24, therefore the absorbent core does not extend into either waist region. (Col. 10, lines 51-60, Col. 11, lines 4-9)

With respect to **Claim 13**: Buell teaches that discontinuities 80 are regularly disposed in the chassis layer.

With respect to **Claim 14**: Discontinuities 80 taught by Buell are formed when the chassis material stretched in the transverse direction, therefore said resulting pleats, or discontinuities, extend in a longitudinal direction.

With respect to **Claim 15**: Discontinuities 80 taught by Buell are pleats, therefore they form a plurality of laterally spaced columns that extend in a longitudinal direction.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11, 12 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buell et al ('274) in view of Nakahata (U.S. Patent No. 6,262,331).

With respect to **Claims 11,12**: Buell does not teach that the discontinuities are comprised of any of the items in the group set forth in claim 11. Nakahata teaches an absorbent article having a plurality of discrete spaced discontinuities in the form of rectilinear slits 206. Nakahata teaches that such discontinuities accommodate and distribute tensile forces thus providing a more

comfortable and adjustable fit, therefore it would be obvious to one of ordinary skill in the art to treat the edges of discontinuities 80 so as better accommodate tensile forces and prevent destruction of the chassis layer.

With respect to **Claim 16**: Buell does not teach that the edges of discontinuities 80 are treated. Nakahata teaches that the topsheet material is a nonwoven treated to be elastic, therefore the edges of slits 206 in said topsheet will be treated as well. Nakahata teaches that such treatment better accommodates tensile forces thus preventing tearing, therefore it would be obvious to one of ordinary skill in the art to treat the edges of discontinuities 80 so as better accommodate tensile forces and prevent destruction of the chassis layer.

With respect to **Claims 17,18**: Buell does not teach that application of tensile forces results in a plurality of equal openings having an area from about 1 mm² to about 2,500 mm². Nakahata teaches that the application of tensile forces 202 to slits 206 results in the formation of a plurality of openings having an area in the range of about 1 mm² to about 2,500 mm². The permission of the slits to open upon application of tensile forces relieves the area and distributes the forces, thereby preventing rupturing of the openings or tearing of the topsheet, therefore it would be obvious to one of ordinary skill in the art to allow the discontinuities 80 taught by Buell to split and create a plurality of openings having an area in the range taught by Nakahata, thus satisfying the limitation of claims 17 and 18 as equal area openings would be created as a result of equal tensile forces applied to slits 206 of equal size.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand
Examiner
Art Unit 3761

MJH

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

